

EXHIBIT 12

Excerpts from the Second Deposition of Dr. Hal J. Singer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

- - -

CUNG LE, NATHAN QUARRY, JON: CIVIL ACTION
FITCH, BRANDON VERA, LUIS :
JAVIER VAZQUEZ, and KYLE :
KLINGSBURY on behalf of :
themselves an others :
Similarly situated, :
Plaintiffs : CASE NO.
vs. : 2:15-cv-01045-RFB
: (PAL)
: :
ZUFFA, LLC d/b/a ULTIMATE :
FIGHTING CHAMPIONSHIP and :
UFC, :
Defendants :
- - -

Tuesday, January 23, 2018

DAY 2

- - -

Continuation of videotaped
deposition of HAL J. SINGER, Ph.D., taken
pursuant to notice, was held at the
offices of BERGER & MONTAGUE, P.C., 1622
Locust Street, Philadelphia, PA 19103,
commencing at 10:19 a.m., on the above
date, before Lori A. Zabielski, a
Registered Professional Reporter and
Notary Public in and for the Commonwealth
of Pennsylvania.

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1 it's not -- it's certainly not necessary
 2 to engender competitive outcomes so long
 3 as the markets are more open, less
 4 restrictive and rivals get a foothold and
 5 are able to put forward compelling
 6 matches for MMA audiences.

7 Q. Are there -- at this point,
 8 following your rebuttal report, is it
 9 your opinion that there are many ways to
 10 get to a lower foreclosure share that
 11 would constitute an appropriate but-for
 12 world?

13 A. Well, remember, all that
 14 needs to happen to get to a lower
 15 foreclosure share is that Zuffa would
 16 need to change the parameters of its
 17 contracts with fighters in such a way as
 18 to ensure that the cumulative duration of
 19 the restrictions don't take you over some
 20 level that a Court would deem
 21 exclusionary.

22 That's all you need to get
 23 the foreclosure share down. We had
 24 talked about whether 30 months -- 36

1 exclusionary arrangement.

2 Now, I have tried to inform
 3 the Court based on what I think is the
 4 average career span of a fighter and
 5 that -- and that when we -- when we
 6 figure out how to draw that line, we
 7 ought to take into consideration how much
 8 of a fighter's remaining career span is
 9 left after they sign with Zuffa.

10 But depending on where that
 11 line gets drawn, Zuffa could then
 12 construct its contracts in such a way as
 13 to comply with that -- with that line,
 14 and with an important caveat: So long as
 15 30 percent, say, is tolerated, they
 16 could -- they could carve off 30 percent
 17 or, in fact, more if the market share is
 18 not quite 100 percent. They could carve
 19 off a certain portion of their fighters
 20 and subject them to potentially longer
 21 contracts.

22 So there is not -- there is
 23 not a -- there is not one way to get a
 24 foreclosure share under 30, as we

1 months was too long and, you know, what
 2 would be a -- what would be a duration
 3 that would be acceptable to a Court.
 4 That, to me, is really the
 5 key element of what you need in a
 6 contract to bring the foreclosure share
 7 down to levels of zero, 20 or 30 percent.
 8 After that, what we are doing here is we
 9 are just filling in other aspects of the
 10 but-for world that would complement or be
 11 consistent with that -- with that
 12 outcome.

13 Q. All right. So in your
 14 opinion, does but-for world have to
 15 include contracts that are -- exclusive
 16 contracts that are no longer than one
 17 year?
 18 A. Well, I think we went
 19 through this in the first -- in the first
 20 deposition. But, again, I mean, my
 21 answer is not going to change. It's
 22 going to be -- it's going to depend on
 23 where -- where the Court would draw the
 24 line as to what's considered to be an

1 discussed. There are a lot of ways to
 2 get it down. But these other parameters
 3 that I am informing right now are things
 4 that help fill in what the but-for world
 5 would look like. They are meant to
 6 complement or be consistent with. But
 7 they're -- I think that while we have
 8 been going in circles, these other
 9 parameters, while important, aren't the
 10 levers that are pushing foreclosure down
 11 to 30, 20 or zero percent.

12 Q. Okay. One simple point I
 13 had been wondering about based on the
 14 support, you had told me before that
 15 there is not one way to get foreclosure
 16 share under 30; there are a lot of ways
 17 to get it down.

18 That's still your opinion?

19 A. Oh, sure. I just gave
 20 you -- I just gave you two ways to do it.
 21 One could be across the board, every
 22 single contract contains the same
 23 provision. That would get you down.
 24 Another way to do it would be to do a

1 more open, there is more worker
2 mobility.

3 Whether or not my model can
4 accommodate that distinction, I
5 would want to think about it some
6 more. I just haven't thought
7 about it yet.

8 BY MR. ISAACSON:

9 Q. Looking at paragraph 198,
10 there is a couple things you have listed
11 in your plausible but-for world, the
12 third of which is clauses that allow
13 fighters enhanced mobility.

14 What do you mean by that?

15 A. I guess since I have already
16 listed right-to-match, I would certainly
17 include right-to-match in that. But I am
18 thinking of the other -- the other
19 clauses that are extending the duration
20 or otherwise, tying up or sewing up of
21 fighters with Zuffa.

22 Q. And the various tolling
23 provisions?

24 A. Correct. Tolling or

1 what you are doing here.

2 MR. CRAMER: Asked and
3 answered.

4 THE WITNESS: I am referring
5 to any of the restrictions. I am
6 not -- I am saying that it would
7 be plausible that most, if not
8 all, of them would go away. It's
9 conceivable that some would stick
10 around. But I think that what I
11 am trying to capture is a world in
12 which -- in which fighters have
13 greater mobility.

14 BY MR. ISAACSON:

15 Q. So when you are referring to
16 clauses that allow fighters enhanced
17 mobility, are you assuming that most or
18 all of the tolling provisions go away?

19 A. If those tolling provisions
20 have the effect of extending the duration
21 of the contracts beyond, say, 12 months,
22 then I think that in a more open and
23 competitive environment, those tolling
24 restrictions would likely go away.

1 exclusive -- the exclusive provision. I
2 mean, we could -- we could go through
3 each one, but anything that --

4 Q. I would rather not.

5 A. Okay.

6 MR. CRAMER: Were you done
7 with your answer? Anything that
8 you were about to say.

9 THE WITNESS: Yeah, anything
10 that extends the duration or
11 otherwise lessens mobility.

12 BY MR. ISAACSON:

13 Q. Okay. So but when you are
14 saying a plausible but-for world includes
15 clauses that allow fighters enhanced
16 mobility, what are you referring to?

17 MR. CRAMER: Asked and
18 answered.

19 BY MR. ISAACSON:

20 Q. For example, are you
21 referring to eliminating all of those
22 tolling restrictions that you have
23 pointed to or something less? I am
24 trying to get an idea of what you are --

1 Q. All right. So by clauses
2 that allow fighters enhanced mobility,
3 you are thinking of tolling provisions
4 that have the effect of extending the
5 duration of the contracts beyond 12
6 months?

7 A. Correct.

8 Q. And in your plausible
9 but-for world, all of those tolling
10 provisions would go away, most of them?

11 A. I think I gave you an
12 example where I could conceive of a
13 champion's clause staying around but
14 effectively being negated by virtue of
15 other more mobility. I think the point
16 that I am trying to make here, just so
17 that it's clear if it wasn't, is that I
18 am trying to give some granularity to
19 what Zuffa's most likely or most
20 plausible contract would be in a but-for
21 world, and given the -- given the record
22 evidence, this is the best that I can do
23 at trying to give some granularity to
24 that contract.

<p>1 Q. And from that -- and from 2 that, your models -- your damages models 3 and your second impact model would 4 estimate -- would estimate damages impact 5 from that but-for world?</p> <p>6 MR. CRAMER: Objection to 7 form.</p> <p>8 Go ahead.</p> <p>9 THE WITNESS: If you give me 10 a but-for foreclosure share, I can 11 tell you what the -- what the -- 12 how much wages would go up by.</p> <p>13 BY MR. ISAACSON:</p> <p>14 Q. All right. Now, if the 15 Court were to rule that an exclusionary 16 contract is over two years and it's not 17 exclusionary, it's two years or less, if 18 you -- would an appropriate but-for world 19 then be contracts that were two years or 20 less, plus some other parameters, and 21 that would achieve a foreclosure share of 22 30 percent or less?</p> <p>23 MR. CRAMER: I am going to 24 object to the extent that this</p>	<p>1 is exclusionary and in the first 2 question, that they ruled that above one 3 year was exclusionary. Everything else 4 -- everything else is the same.</p> <p>5 MR. CRAMER: Same objection.</p> <p>6 BY MR. ISAACSON:</p> <p>7 Q. You would still -- if Zuffa 8 moved its contracts down to two years or 9 less, that would achieve foreclosure 10 shares of 30 percent or less?</p> <p>11 A. I think that if we draw the 12 line, if one were to draw the line at 25 13 months and if -- and if all of the 14 contracts came in at 24 months, then it's 15 almost tautological. If that's how we 16 define foreclosure, then the foreclosure 17 would come in at less than 30 percent.</p> <p>18 Q. And in that situation, you 19 would reach the same conclusion as to the 20 amount of damages and your second impact 21 analysis -- second impact model would 22 remain the same?</p> <p>23 MR. CRAMER: Objection to 24 form, incomplete hypothetical,</p>
<p>1 calls for a legal conclusion.</p> <p>2 But go ahead and answer, if 3 you understand the question.</p> <p>4 THE WITNESS: Let me -- it 5 was a two-parter and let me take 6 the second part, which is probably 7 easier. And that is, would it -- 8 would it get you to a foreclosure 9 share below 30 percent? And I 10 think that by the construction of 11 your hypothetical, it would, if I 12 understood it correctly. You are 13 saying the Court deems anything in 14 excess of 24 months --</p> <p>15 MR. ISAACSON: Right.</p> <p>16 THE WITNESS: -- to be 17 exclusionary -- let me finish -- 18 and you asked me to posit a world 19 in which the contracts were 20 exactly 24 months.</p> <p>21 BY MR. ISAACSON:</p> <p>22 Q. My intent is this question 23 two is the same as the last question. If 24 the Court has ruled that above two years</p>	<p>1 calls for a legal conclusion.</p> <p>2 THE WITNESS: I want to 3 think about it a little more, but 4 sitting here, it's not -- it's not 5 obvious how I would change my 6 impact model or damages model 7 based on that hypothetical. I 8 probably would want to think about 9 it a little more.</p> <p>10 But my -- what's giving me 11 some reservation is that -- I 12 wouldn't draw the line at 24. I 13 think the 24 represents too much 14 of a fighter's life span or career 15 span.</p> <p>16 And so that -- while it 17 would be a significant improvement 18 over where things are today, it's 19 conceivable that a movement 20 from 36, roughly where we are 21 today, to 24, would engender 22 different competitive effects than 23 a movement from 36 to 12? I mean, 24 certainly at 12, the market is</p>

1 Q. Okay. The next thing you
 2 say is an easier and more certain route
 3 to free-agency.

4 What does that mean beyond
 5 what you have already described?

6 A. I think that might just be a
 7 restatement of the things that I have
 8 described.

9 Q. All right. And then
 10 enhanced co-promotion, what do you mean
 11 by that?

12 A. So I mean co-promotion in
 13 the sense that there would be no
 14 restrictions on fighters to participate
 15 in an event with a rival MMA promoter.
 16 So it's perhaps a broader definition than
 17 literally engaging in the -- in the
 18 co-promotion. I think that it would make
 19 sense in that world for both promoters to
 20 engage in promotion, they would have
 21 incentives to do so.

22 But the restriction that I
 23 am -- that I have in mind is the
 24 restriction that would prevent, say, a

1 Bellator event that a UFC fighter wanted
 2 to fight in, the UFC fighter could go do
 3 that even during the one-year period?

4 A. I think that's what I have
 5 in mind.

6 Q. And the result of that would
 7 be that the UFC and Bellator or other
 8 promoters would end up co-promoting
 9 events; is that your assumption?

10 A. I think that once you set in
 11 motion the event and it -- and it
 12 features a Zuffa fighter, that Zuffa
 13 would have strong unilateral incentives
 14 to want to promote that event, just as
 15 they did with the Conor McGregor boxing
 16 match.

17 Q. And in your opinion, what
 18 would happen to MMA in this world, would
 19 most events be co-promoted?

20 A. Well, I don't -- I don't
 21 have an opinion as to -- as to whether
 22 most would be. I am just suggesting that
 23 there would be more -- there would be
 24 more co-promotion than what occurs today.

1 Zuffa fighter for participating in an
 2 event with a non-Zuffa or Zuffa rival
 3 promoter.

4 Q. So you have referred in this
 5 to exclusive contracts of one year or
 6 less. Well, maybe not.

7 When you said -- when you
 8 say "substantially shorter duration
 9 fighter contracts of one year or less,"
 10 are those exclusive contracts or
 11 nonexclusive contracts?

12 A. Well, they are exclusive
 13 contracts but with a caveat, which is
 14 that if there is an opportunity to
 15 participate in an event with a rival
 16 promoter, if I have No. 1 and you have
 17 No. 2 and there is an opportunity to put
 18 on an incredible show, that there
 19 wouldn't be impediments, contractual
 20 impediments to preventing that from
 21 happening.

22 Q. So in your -- in this world,
 23 there would be one-year exclusive
 24 contracts; however, if there was a

1 Q. All right. And is it -- am
 2 I correct that with regards to each one
 3 of these pieces of your but-for world,
 4 such as enhanced co-promotion, you don't
 5 have an opinion as to how much that piece
 6 would reduce foreclosure share?

7 MR. CRAMER: Objection to
 8 form.

9 THE WITNESS: I just don't
 10 understand the question. I don't
 11 think that foreclosure share, as I
 12 have constructed it, would be
 13 sensitive to the level of
 14 co-promotion. I think, again, we
 15 might have the causality running
 16 in the other way.

17 BY MR. ISAACSON:

18 Q. So in terms -- in terms of
 19 your estimates of damages -- various
 20 estimates of damages, you are not able to
 21 isolate how much of those damages, for
 22 example, are due to the lack of the
 23 enhanced co-promotion that you describe
 24 here?

1 that fair?

2 A. I haven't expressed an
3 opinion. It seems to me a restriction of
4 that nature could be consistent with a --
5 with a lower foreclosure share, and so as
6 an economist, remember, I go back -- my
7 model turns on the foreclosure share.
8 And so that's how I would attempt to
9 answer that question in the first
10 instance. And I don't think that I -- my
11 model or anything that I have written or
12 read can inform in any kind of
13 intelligent way an answer to that
14 question.

15 Q. Okay. The -- in looking,
16 again, at the substantially shorter
17 duration fighter contracts of one year or
18 less, does that -- does that put any
19 limit on Zuffa re-signing or extending
20 the contract before the year expires in
21 exchange for paying the fighter more
22 money?

23 A. Well, I think that the
24 plaintiffs are complaining that Zuffa is

1 more money and did that with the same
2 amount of fighters as today, have two- or
3 three-year contracts, would that be
4 anticompetitive?

5 MR. CRAMER: Incomplete
6 hypothetical, form.

7 THE WITNESS: Well, when you
8 say did it the same as today, I
9 mean --

10 BY MR. ISAACSON:

11 Q. The same amount, same
12 numbers.

13 MR. CRAMER: Objection to
14 form, incomplete hypothetical.

15 THE WITNESS: I think I
16 would need more specificity in the
17 hypothetical. But if Zuffa
18 engaged in some of the same
19 tactics that it did today to
20 secure extension, such as refusing
21 to either give a fighter a fight
22 or giving the fighter an
23 inappropriate match-up as a
24 punishment for not extending, I

1 strategically using certain provisions of
2 the contract to lock fighters into
3 effectively perpetual extensions when
4 they want them. And given that that is
5 part of the challenged conduct, I
6 would -- I would at least hope that if we
7 were to rewrite these in a way that they
8 were in compliance with the antitrust
9 laws, that that sort of gamesmanship
10 would be -- would be either disallowed or
11 much harder to engage in.

12 Q. Right. But in your opinion,
13 would those rewrite of the contracts
14 prohibit Zuffa from simply offering
15 fighters more money to extend the
16 contract beyond one year?

17 MR. CRAMER: Incomplete
18 hypothetical.

19 THE WITNESS: I don't think
20 that I have an opinion on that.

21 BY MR. ISAACSON:

22 Q. And if Zuffa did
23 successfully extend the contracts beyond
24 one year by simply paying the fighters

1 think that -- I think that that --
2 that is part of the challenged
3 conduct and I think that those
4 sorts of tactics would be absent
5 in a but-for world.

6 BY MR. ISAACSON:

7 Q. Okay. But all I am focused
8 on is if Zuffa pays more money to extend
9 the contract, not the other -- not the
10 other things you are pointing to.

11 A. I hear you.

12 Q. If Zuffa did that and
13 extended these contracts to the point
14 where they had the same effective
15 duration as the contracts have today,
16 would that have an anticompetitive effect
17 in your view?

18 MR. CRAMER: Objection to
19 form, incomplete hypothetical.

20 THE WITNESS: I mean, the
21 way that I am hearing the question
22 is that if Zuffa were to behave
23 competitively, and that is compete
24 on the merits, and keep fighters

1 with higher payments as opposed to
 2 the exclusionary provisions, you
 3 know, would that competition on
 4 the merits be barred? And I would
 5 say that most likely not. If it's
 6 not part of the challenged
 7 conduct, then I think that it
 8 sticks around in the but-for
 9 world.

10 BY MR. ISAACSON:

11 Q. And if Zuffa offered
 12 fighters contracts of one year or less
 13 and the fighters then bargained on their
 14 own behalf for longer contracts, is that
 15 permitted in the but-for world?

16 MR. CRAMER: Incomplete
 17 hypothetical.

18 THE WITNESS: I am loathed
 19 to say that the economic model
 20 permits or disallows anything.
 21 The economic model requires, as
 22 its input, foreclosure share. And
 23 what we are trying to do now in
 24 this rebuttal report is to give

1 exist today or guaranteed
 2 contracts? Or -- incomplete
 3 hypothetical. You need to
 4 specify.

5 MR. ISAACSON: You are doing
 6 speaking objections now. So...

7 MR. CRAMER: You are asking
 8 unfair and incomplete questions
 9 that are vague.

10 THE WITNESS: I guess I
 11 would just have to think about it.
 12 I am not -- it's hard for me to
 13 understand how the duration of the
 14 contract would ever -- why a
 15 fighter would ever want to -- want
 16 to extend the duration all things
 17 equal. It just seems like that
 18 would represent a restriction on
 19 that fighter's mobility. So it's
 20 hard to -- it's hard to understand
 21 it, I guess, from an economic
 22 perspective.

23 BY MR. ISAACSON:

24 Q. You can't understand why a

1 more flavor or more granularity to
 2 what a but-for world would look
 3 like consistent with that lower
 4 foreclosure share.

5 And so when you ask me a
 6 question like this, it's not --
 7 it's not obvious how with that --
 8 with those ground rules how I can
 9 rule in or rule out certain
 10 aspects, unless they are obviously
 11 part of the challenged conduct.

12 BY MR. ISAACSON:

13 Q. I want to go over this again
 14 because I don't understand your answer.

15 A. Okay.

16 Q. The -- you have written that
 17 the plausible but-for world would have
 18 fighter contracts of one year or less.

19 Is that a result to have to
 20 end up one year or less, even if fighters
 21 ask for contracts greater than one year?

22 MR. CRAMER: Objection to
 23 form. Do you mean contracts
 24 exactly like the contracts that

1 fighter would ever want the certainty of
 2 a multiyear contract?

3 MR. CRAMER: Objection to
 4 form, incomplete hypothetical.

5 THE WITNESS: Certainly not
 6 the way that these contracts work.
 7 I think that, you know, they work
 8 as one-way ratchets, and I think
 9 that you don't get paid unless you
 10 fight. And so the notion that I
 11 would -- that I would, all things
 12 equal, want to extend the contract
 13 is just -- it's not obvious to me
 14 why that would be in the fighter's
 15 economic incentive.

16 BY MR. ISAACSON:

17 Q. All right. But in your
 18 but-for world, can you conceive of
 19 fighters who would want to have contracts
 20 of greater than one year?

21 MR. CRAMER: Objection to
 22 form, incomplete hypothetical.

23 THE WITNESS: It's hard for
 24 me to conceive -- if the standard

<p>1 of the top-tier labor economics journals?</p> <p>2 MR. CRAMER: Misstates the</p> <p>3 testimony.</p> <p>4 THE WITNESS: Beyond the</p> <p>5 ones that I just gave you? I</p> <p>6 don't know if I could -- if I</p> <p>7 could give you others.</p> <p>8 BY MR. ISAACSON:</p> <p>9 Q. Well, which ones have you</p> <p>10 named by name?</p> <p>11 A. I think I gave you</p> <p>12 the Journal of Labor Economics. I think</p> <p>13 I gave you Review of Labor Statistics, I</p> <p>14 believe is one. I am going by memory</p> <p>15 here. I think I have seen some specialty</p> <p>16 journals as well.</p> <p>17 I certainly cite articles,</p> <p>18 but I don't -- I don't -- in various</p> <p>19 labor journals. But I would refer you to</p> <p>20 the rankings instead of going by my</p> <p>21 memory of labor journals.</p> <p>22 Q. Okay. And you mentioned the</p> <p>23 subfield of sports. Are there leading</p> <p>24 journals in that field that you could</p>	<p>1 of Disc 2. We are on the record.</p> <p>2 BY MR. ISAACSON:</p> <p>3 Q. You talked before about how</p> <p>4 individual marginal revenue product</p> <p>5 varies between fighters, and I think we</p> <p>6 agree that fighter compensation agrees</p> <p>7 between various fighters.</p> <p>8 Does current fighter</p> <p>9 compensation vary between fighters in the</p> <p>10 same way that the individual marginal</p> <p>11 revenue product varies between the</p> <p>12 fighters?</p> <p>13 MR. CRAMER: Objection to</p> <p>14 form.</p> <p>15 THE WITNESS: You used the</p> <p>16 word "same" and that's what I am</p> <p>17 tripping up on. There is</p> <p>18 certainly a relationship between a</p> <p>19 fighter's MRP and his or her</p> <p>20 compensation.</p> <p>21 BY MR. ISAACSON:</p> <p>22 Q. Would you describe that</p> <p>23 relationship as significant, substantial</p> <p>24 or minimal or --</p>
<p>1 name?</p> <p>2 A. I don't know if I could name</p> <p>3 them. I certainly cited articles from</p> <p>4 them, but I would refer you to the same</p> <p>5 rankings.</p> <p>6 THE VIDEOGRAPHER: Excuse</p> <p>7 me, Counsel. We are approaching</p> <p>8 ten minutes left on the disc.</p> <p>9 MR. ISAACSON: Okay.</p> <p>10 - - -</p> <p>11 (Off the record at this</p> <p>12 time.)</p> <p>13 - - -</p> <p>14 MR. ISAACSON: Why don't we</p> <p>15 just change the tape.</p> <p>16 THE VIDEOGRAPHER: The time</p> <p>17 is 12:22 p.m. This is the end of</p> <p>18 Disc 1. We are off the record.</p> <p>19 - - -</p> <p>20 (Off the record at this</p> <p>21 time.)</p> <p>22 - - -</p> <p>23 THE VIDEOGRAPHER: The time</p> <p>24 is 12:31 p.m. This is the start</p>	<p>1 Page 456</p> <p>1 A. Again, I am going to go back</p> <p>2 to just basic labor theory, that in a</p> <p>3 competitive market, the fighter's</p> <p>4 compensation would be equal to his or her</p> <p>5 MRP, in a perfectly competitive -- let me</p> <p>6 stipulate or let me add that caveat. In</p> <p>7 a monopsonized labor market, there is a</p> <p>8 wedge between the MRP and the</p> <p>9 compensation.</p> <p>10 And there is certainly a</p> <p>11 relationship under both extremes, of the</p> <p>12 monopsonized market and the perfectly</p> <p>13 competitive market. And part of the</p> <p>14 theory of the case is, as you know, that</p> <p>15 the conduct here upset that normal</p> <p>16 transmission mechanism, that is, it upset</p> <p>17 what would have otherwise -- what gains</p> <p>18 to fighter productivity that would have</p> <p>19 otherwise been passed along in the form</p> <p>20 of higher wages didn't occur, in my view,</p> <p>21 as they -- as they would have in a world</p> <p>22 absent the restrictions on fighter</p> <p>23 mobility.</p> <p>24 Q. All right. I understand you</p>

1 to be saying that in the current world,
 2 that gains in individual marginal revenue
 3 product won't translate into individual
 4 compensation in the same way as they
 5 would in a competitive world. Then the
 6 competitive world, more of the marginal
 7 revenue product, would translate into
 8 compensation.

9 A. More of the gains.

10 Q. More of the gains.

11 A. Yes.

12 Q. Is there -- however -- with
 13 the understanding that there is not the
 14 same quantitative amount of translation,
 15 is the -- is there still some sort of
 16 linear relationship between the rate they
 17 are going up?

18 A. Again, it depends on whether
 19 we are dealing with an open and free
 20 labor market or a -- or a labor market
 21 that is subject to a monopsony.

22 What we have observed here
 23 is that fighter compensation, although it
 24 was rising, did not -- did not keep up

1 Q. And to do that calculation,
 2 you calculated a career length using
 3 fights for only those promoters in the
 4 tracked market; is that correct?

5 A. Are you speaking about in my
 6 rebuttal report?

7 Q. As of today, where do you
 8 stand on this issue?

9 A. I think the best estimates
 10 as of today is what's in my rebuttal
 11 report. I think I have tried to -- I
 12 have tried to cut it every which way
 13 that's -- what I consider to be
 14 reasonable. I have also appealed to what
 15 Zuffa itself has estimated its average
 16 duration was of fighters, and I think
 17 that my estimates are more in line with
 18 Zuffa's internal estimates.

19 Q. All right. And for your
 20 estimates, you relied on data from
 21 sherdog.com?

22 A. I think that is the
 23 beginning of it. I think I need more
 24 than just Sherdog, but I think that that

1 with the rate of growth in event
 2 revenues, and I am positing that in a
 3 more competitive environment indeed
 4 showing, based on my econometric model,
 5 that the rate of increase in compensation
 6 would have been higher and more in line
 7 with the rate of increase in event
 8 revenue.

9 Q. Now, you talked before about
 10 your estimates of median career length,
 11 and I believe in your rebuttal report,
 12 it's approximately 41 months or five
 13 bouts, fights.

14 A. I think that I spent more
 15 time estimating the duration and months
 16 than in bouts. I think that -- I think
 17 that the relevant -- the relevant figure
 18 here for what we are fighting about is
 19 the duration as measured in months.

20 Q. All right. And to do
 21 that -- to do that analysis, you used
 22 data obtained from sherdog.com; is that
 23 right?

24 A. I believe so, yes.

1 is the starting point of my analysis.

2 Q. And then you calculated
 3 career length using fights that appeared
 4 in FightMetric?

5 A. It sounds right, but I think
 6 I just feel more comfortable -- given how
 7 detailed the analysis was, I would
 8 probably feel more comfortable going
 9 there and telling you exactly what we
 10 did.

11 Q. All right. You have got
 12 your rebuttal report in of front of you,
 13 if you want to look at it.

14 A. Okay. Let me see. If you
 15 have the chart handy, that might get us
 16 there faster. If not, I will try to find
 17 it.

18 Q. It might be on page 53. You
 19 have got median and mean duration to
 20 Table 1 there.

21 A. Right. But I think -- I
 22 think I now -- I now see what was
 23 tripping me up. You had imposed a
 24 requirement, the added requirement that

1 we only measure their career span while
 2 they are within the relevant input
 3 market, and that's only the case for the
 4 second and third rows, you see. I think
 5 you --

6 Q. You -- I see. All right.

7 A. And the third market is yet
 8 a different -- I mean, those are
 9 different -- those are different market
 10 definitions. And I think you asked me
 11 for one in particular.

12 Q. All right. So when you say
 13 that your best estimate of the career of
 14 a fighter is found in your rebuttal
 15 report, would that be Table 1 on page 53
 16 of your report?

17 A. Correct.

18 Q. And there, you look at four
 19 different things. One is limited to when
 20 Zuffa fighters are fighting in Zuffa
 21 bouts; is that right?

22 A. Correct.

23 Q. So that would exclude Zuffa
 24 fighters who fought for other promoters

1 in FightMetric and then expands it
 2 to also include those that are in Fight
 3 Matrix I think plus another promotion as
 4 well.

5 Q. I think they are totally
 6 over overlapping, but let me -- let me --

7 A. Oh, it's true that the way
 8 it's constructed, the tracked measure of
 9 the market definition sits perfectly
 10 inside of the ranked measure, right.

11 Q. All right. So the ranked
 12 measure includes all the promoters who
 13 are either in Fight Matrix or
 14 FightMetric?

15 A. The fighters associated with
 16 promoters, correct, yes.

17 Q. So if you had fights outside
 18 of those promoters, those would not be
 19 counted as part of your career?

20 A. Again, I just want to be
 21 careful that as we moved to the ranked
 22 measure, the -- it's the fighter that is
 23 driving the analysis, not his or her
 24 associated promoter, right? It doesn't

1 either before or after their career at
 2 Zuffa?

3 A. Correct.

4 Q. And then you use the
 5 relevant input market tracked measure.
 6 That is based on FightMetric data,
 7 correct?

8 A. Correct.

9 Q. And that would be -- and you
 10 would only be calculating fights that
 11 were for the promoters in that market, in
 12 that -- in FightMetric?

13 A. Correct. When they go
 14 outside of the relevant input market as
 15 defined by the tracked measure, then they
 16 would no longer be considered to be
 17 active in their career.

18 Q. All right. And you would --
 19 and then for the third way you would look
 20 at it, you would look for the ranked
 21 measure, which is -- which would include
 22 only the promoters in FightMetric?

23 A. Well, my ranked measure
 24 members starts with a set of all fighters

1 begin with a set of promoters. It
 2 happens to generate a set of promoters as
 3 a byproduct. But here, fighters are
 4 going to be included regardless of who
 5 their associated promoter is so long as
 6 they have a rank higher than 650.

7 Q. Right. But I'm not talking
 8 about market definition now. I am just
 9 talking about how you calculate the
 10 median career of a fighter.

11 A. Sure.

12 Q. If they -- if they had
 13 fights outside of the promoters who are
 14 counted in FightMetric or Fight Matrix,
 15 those would not be counted as part of the
 16 fighter's career?

17 A. I wouldn't -- I wouldn't put
 18 it that way. I would feel more
 19 comfortable saying something like that
 20 with respect to the FightMetric measure,
 21 which is the tracked measure, because
 22 that is driven by the identity of the
 23 promoter.

24 The identity of the promoter

1 some help. So promoters inside of
 2 my relevant market or outside of
 3 my relevant market?

4 BY MR. ISAACSON:

5 Q. Yes, promoters inside your
 6 relevant market.

7 A. Remember -- the question
 8 doesn't make any sense because it's a
 9 hypothetical monopsonist pushing the
 10 wages down, so it is the only -- it's the
 11 only buyer in the relevant market.

12 Q. In each of the relevant
 13 markets that you defined, did you assume
 14 that Zuffa was the only relevant buyer?

15 A. No.

16 Q. In the -- for example, in
 17 the tracked market, did you test whether
 18 if you reduced the individual pay of
 19 Zuffa fighters, Bellator would step in
 20 and pay the -- pay the amount they were
 21 being paid and the fighter would move to
 22 Bellator?

23 A. I don't think the question
 24 makes sense given that Bellator wasn't

1 testing to experiment to say what would
 2 happen if Zuffa lowered what it's paying
 3 its fighters, whether those fighters
 4 would move to another promoters, such as
 5 Bellator, World Series of Fighting?

6 MR. CRAMER: Asked and
 7 answered.

8 THE WITNESS: I did -- I did
 9 look at record evidence that spoke
 10 to that, for example, that Zuffa
 11 believed that -- that anything
 12 outside of Zuffa was the minor
 13 leagues and, therefore, there
 14 wasn't much threat of a defection.
 15 Also, we have the contract
 16 themselves were preventing
 17 defections. So yes, I looked
 18 that.

19 BY MR. ISAACSON:

20 Q. Other -- so you looked at
 21 record evidence.

22 A. Yes.

23 Q. Other than looking at the
 24 record evidence, did you do any testing

1 included in the -- in the tracked market
 2 or at least -- sorry -- or at least
 3 Bellator's fighters. Remember, we are
 4 contemplating a hypothetical monopsonist
 5 who controlled all of the fighters in the
 6 tracked market, including Bellator's
 7 fighters. Would that be a sufficient
 8 number of fighters such that you could
 9 push wages below competitive levels.

10 Q. All right. Bellator is a
 11 promoter in the tracked market, right?

12 A. Correct.

13 Q. So is Affliction, correct?

14 A. Anyone who was tracked by
 15 FightMetric.

16 Q. Okay. So was WEC and
 17 EliteXC?

18 A. I can't tell you by memory
 19 if those were or were not.

20 Q. And did you -- I am just
 21 trying to understand by the end of your
 22 reply report what SSNIP analysis you have
 23 done.

24 Did you do any actual

1 to determine whether fighters in any of
 2 your -- in any of your markets you were
 3 defining would move to another promoter,
 4 such as Bellator or World Series of
 5 Fighting, if their individual pay
 6 declined?

7 MR. CRAMER: Objection to
 8 form.

9 THE WITNESS: When you think
 10 about it, once you get into the
 11 tracked, and particularly once you
 12 get into the ranked, the market is
 13 drawn so broadly that it subsumes
 14 all of these rival promoters. So
 15 the question just doesn't make
 16 sense as posed. They are all in
 17 the relevant market.

18 BY MR. ISAACSON:

19 Q. Well, are you saying that
 20 all -- all the rival promoters are in the
 21 tracked market or in the ranked market or
 22 in both?

23 A. No, that's not what I am
 24 saying. I'm saying that your question

1 pertained to Bellator, I think, and
 2 Bellator is inside of the tracked. And
 3 so it doesn't make sense to ask whether a
 4 fighter in this hypothetical market would
 5 substitute to Bellator. It's already in
 6 there. We are asking if you control all
 7 of those fighters, in addition to Zuffa's
 8 fighters, in addition to whoever else is
 9 inside of the tracked market, would that
 10 be enough to permit you to exercise
 11 monopsony power.

12 So I could help you along,
 13 but asking if they would substitute to
 14 Bellator isn't -- is nonsensical.

15 Q. Well, you agree with me that
 16 for the tracked market, Bellator,
 17 EliteXC, WEC and other promoters are
 18 participants in that market?

19 A. I don't like to put it that
 20 way, no.

21 Q. All right. Do you agree
 22 that they are customers for the fighters?

23 A. They are buyers in that --
 24 in that market, yes.

1 FightMetric?
 2 Q. Ranked market.
 3 A. Oh, ranked market.
 4 Q. Yes.
 5 A. So have you identified -- I
 6 think it would help me. You have
 7 identified a promoter now for the first
 8 time in the series of questions that sits
 9 outside of the tracked but inside of the
 10 ranked.

11 Q. Yes.

12 A. Got it.

13 Q. And maybe it will help if I
 14 repeat the question --

15 A. Okay.

16 Q. -- if anybody ever reads
 17 this.

18 A. Okay.

19 Q. The -- in the -- in the
 20 ranked market, did you test whether
 21 fighters in that market would move to
 22 another buyer in the market such as World
 23 Series of Fighting if their individual
 24 pay declined other than what you have

1 Q. Okay. So in the tracked
 2 market, did you test whether fighters in
 3 that market would move to another buyer
 4 in that market such as Bellator if their
 5 individual pay declined other than
 6 looking at record evidence?

7 A. Again, no, and that's not
 8 the relevant experiment to perform.

9 Q. Okay. And in the tracked
 10 market, did you test whether fighters in
 11 that market would move to another buyer
 12 in that market such as World Series of
 13 Fighting if their individual pay declined
 14 other than looking at record evidence?

15 A. World Series of Fighting, I
 16 just can't recall if that's a promoter
 17 that was tracked by FightMetric. You
 18 might -- you might be able to help me
 19 out, and then I could give you an answer.

20 Q. World Series of Fighting is
 21 included in the -- is included in Fight
 22 Matrix in your tracked -- in your
 23 tracked --

24 A. Did you mean to say Fight --

1 said, you looked at revenue evidence?
 2 A. I would say no. They are --
 3 they are already in the ranked market and
 4 so we are not looking at substitution
 5 within the ranked market. That's not the
 6 relevant inquiry.

7 Q. Okay. And -- all right.
 8 Now, for each of those markets, let's go
 9 to promoters that are outside the market.
 10 Okay.

11 So for the tracked market,
 12 did you look at -- did you test whether
 13 fighters in that -- let me start over.

14 In the tracked market, other
 15 than looking at record evidence, did you
 16 test whether fighters in that market
 17 would move to another buyer outside the
 18 market such as World Series of Fighting
 19 if their individual pay declined?

20 A. I think that it was largely
 21 informed through record evidence and
 22 through other inferences that I made,
 23 such as the profitability of Zuffa's
 24 weight suppression with a much smaller

1 set of fighters. I think that there was
 2 not a separate empirical analysis of
 3 defection of fighters from -- the
 4 promoters included -- in tracked, for
 5 example, into the promoters included in
 6 ranked but not in tracked.

7 Q. And your answer would be the
 8 same for ranked that -- in terms of the
 9 type of analysis you used?

10 A. Yes.

11 Q. And your answer would be the
 12 same for the headliner submarket?

13 A. Correct.

14 MR. CRAMER: Whenever it's a
 15 good time for a break, we have
 16 been going for over an hour.

17 MR. ISAACSON: I think I may
 18 be almost finished with something
 19 here.

20 MR. CRAMER: Sure.

21 BY MR. ISAACSON:

22 Q. Did you consider any
 23 narrower definitions to the market, by
 24 which I mean did you consider a smaller

1 talking about the markets you defined.
 2 With respect to the tracked market, did
 3 you include all of the fighters that
 4 fought for all of the buyers in that
 5 market?

6 A. It's conceivable that there
 7 are some fighters who were not listed in
 8 FightMetric but are affiliated with a
 9 promoters who is. It's conceivable. But
 10 I think I am more comfortable saying that
 11 we let the FightMetric data dictate who
 12 was in the market. It's just whoever
 13 they tracked.

14 Q. Okay. And the reason that
 15 you didn't include all of the fighters
 16 for all of the promoters in the tracked
 17 market is because you let the FightMetric
 18 data dictate who was in the market?

19 A. Not really. I think that we
 20 are -- we are getting confused again
 21 about -- about the market definition
 22 exercise and the way that I measured and
 23 identified fighters in the market.

24 I used various techniques,

1 market of buyers than your tracked
 2 market?

3 A. Sure, the headliner market.
 4 The headliner submarket, as I like to
 5 call it.

6 Q. Was the headliner submarket
 7 the smallest market you considered?

8 A. That is the smallest market
 9 I considered.

10 MR. ISAACSON: All right.

11 Why don't we take a break.

12 THE VIDEOGRAPHER: The time
 13 is 2:33 p.m. We are going off the
 14 record.

15 - - -

16 (Off the record at this
 17 time.)

18 - - -

19 THE VIDEOGRAPHER: The time
 20 is 2:51 p.m. We are back on the
 21 record. This is the start of
 22 Disc 3.

23 BY MR. ISAACSON:

24 Q. Before the break, we were

1 indirect and direct, of the SSNIP test to
 2 try to inform the contours. And I got to
 3 an MMA fighter relevant input market, and
 4 then I went out and found two databases,
 5 one by FightMetric, another by Fight
 6 Matrix, that would allow me to inform or
 7 populate who the fighters were in that
 8 market after we have defined it using the
 9 SSNIP test.

10 So I -- I am just hesitating
 11 on the way that you put the question.
 12 It's not as if the database dictated who
 13 was in the market. We defined a market
 14 as MMA -- professional MMA fighters, and
 15 then we went out looking for databases
 16 that would allow us to populate that
 17 market with actual fighters.

18 Q. Did you use the SSNIP test
 19 to populate who were the buyers in the
 20 market you defined?

21 A. No.

22 Q. Why -- why didn't you
 23 include all of the fighters who fought
 24 for buyers in the tracked market in your

1 A. Yes.
 2 Q. Now, your output markets are
 3 the live MMA events in which the
 4 participating fighters are either in the
 5 relevant input market or the relevant
 6 input submarket?

7 A. Yes.

8 Q. Okay. And the consumers of
 9 the output market include viewers, cable
 10 networks, broadcast networks and
 11 sponsors; is that fair?

12 A. Well, certainly, viewers and
 13 consumers.

14 Can I hear -- can I hear --

15 Q. Viewers, cable networks,
 16 broadcast networks, sponsors.

17 A. I feel more comfortable
 18 saying that viewers are the -- are the
 19 primary consumers in the output market,
 20 not the -- not the cable distributors.
 21 That's just an intermediary between the
 22 viewer and the -- and the producer of the
 23 event.

24 Q. So I am not -- I wasn't

1 trying to assess anybody as primary or
 2 secondary.

3 Rather, consumers -- do the
 4 consumers in your output market include
 5 viewers, cable networks, broadcast
 6 networks and sponsors?

7 MR. CRAMER: Asked and
 8 answered.

9 THE WITNESS: I don't recall
 10 looking at substitution by
 11 sponsors or substitution by cable
 12 distributors. I think that the
 13 right lens is that of the
 14 consumer's perspective, ultimately
 15 the viewer.

16 BY MR. ISAACSON:

17 Q. All right. Well, let me use
 18 a -- maybe it's my word choice.

19 Are the customers in your
 20 relevant output market viewers, cable
 21 networks, broadcast networks and
 22 sponsors?

23 MR. CRAMER: Objection to
 24 form.

1 vertically integrated into certain
 2 networks as well. But...

3 Q. All right. Okay. So are
 4 the customers in your relevant output
 5 market viewers, cable stations, cable
 6 networks, broadcast networks and
 7 sponsors?

8 MR. CRAMER: Form.

9 THE WITNESS: I think that
 10 I -- the most natural customer to
 11 think of in the output market,
 12 which is the consumption of the
 13 event, is the viewer. I think
 14 that we could -- we could talk
 15 about the way that sponsors -- the
 16 role that sponsors play in this
 17 market and the role that cable
 18 networks play, but I -- they are
 19 not -- they are not symmetrically
 20 aligned with the viewers. And I
 21 think that if -- I am trying to
 22 recall the methods that I used to
 23 define the contours, and I think
 24 it was largely from the

1 perspective of viewers.
2 BY MR. ISAACSON:

3 Q. So for your relevant output
4 market, are sponsors customers in that
5 market?

6 MR. CRAMER: Asked and
7 answered.

8 THE WITNESS: I just don't
9 like using -- I don't like using
10 the word "customer."

11 BY MR. ISAACSON:

12 Q. Okay. Are -- in your output
13 market, are sponsors buyers in that
14 market?

15 MR. CRAMER: Asked and
16 answered.

17 THE WITNESS: Sponsors are
18 buying advertising slots that are
19 associated with the event itself,
20 but I think the consumption of the
21 event is most properly understood
22 from the lens of the viewer, the
23 consumer.

24

1 I think the action, the
2 television action at least, is occurring
3 on the pay-per-view side, not on the
4 non-pay-per-view viewing side.

5 Q. As you define your relevant
6 output market, are broadcast networks
7 customers or buyers?

8 A. I think the broadcast
9 networks are buying the rights to
10 distribute the events to the ultimate
11 consumer, which is the viewer. So I
12 still like to think about the consumer or
13 the buyer in the output market, the
14 event, the production of the event as the
15 consumer, the viewer, ultimately.

16 Q. And so I just need to go
17 over this again because I understand you
18 think the consumer -- you think about the
19 consumer as the -- I guess as the -- as
20 the buyer ultimately, but I am trying to
21 figure out who you are excluding. I
22 understand you have got the consumers in
23 there.

24 Are broadcast networks

1 BY MR. ISAACSON:

2 Q. So does that mean sponsors
3 are not buyers in your relevant output
4 market?

5 MR. CRAMER: Asked and
6 answered.

7 THE WITNESS: They buy
8 advertising slots that are sold
9 alongside the event itself, but I
10 am -- I am considering the event
11 as the -- as what's being
12 produced.

13 BY MR. ISAACSON:

14 Q. Okay. In your relevant
15 output market, are broadcast networks --
16 I guess you don't like using the term
17 "customers" for broadcast networks; is
18 that --

19 A. They are certainly not
20 the -- not the ultimate customer. They
21 are an intermediary that gets them
22 between the ultimate customer and the
23 producer. And only for a small sliver of
24 events.

1 customers or buyers in your -- in the
2 relevant output market you have defined?

3 MR. CRAMER: Asked and
4 answered.

5 THE WITNESS: I think they
6 are an intermediate -- an
7 intermediary that stands between
8 the customers and the producers of
9 the events, and only for a small
10 sliver of what I consider the
11 valuable television that's being
12 produced here.

13 BY MR. ISAACSON:

14 Q. So does that mean they are
15 or are not customers or buyers in your
16 relevant output market?

17 A. I think -- sorry.

18 MR. CRAMER: I was going to
19 say, same objection.

20 Go ahead. You may answer.

21 THE WITNESS: I would -- I
22 would say it depends on how you
23 want to -- what question are you
24 trying to answer?

<p>Page 551</p> <p>1 BY MR. ISAACSON: 2 Q. I am talking about the 3 questions you are answering that you are 4 defining in your market. I am talking 5 about your relevant output market. 6 A. Sure. 7 Q. Are the buyer -- are the 8 broadcast networks buyers or customers in 9 that market? 10 MR. CRAMER: Same objection. 11 THE WITNESS: I think 12 that -- I would have to go back to 13 my initial report, but if I am 14 remembering correctly, I was 15 looking at where viewers would 16 go in response to a SSNIP in the 17 output market, not where cable 18 distributors would go, not where 19 cable networks would go. I was 20 looking at where viewers would go. 21 That's my memory, sitting here 22 today, as to -- as to how I 23 performed the SSNIP in the output 24 market.</p>	<p>Page 553</p> <p>1 output market as you define it, you 2 didn't do a SSNIP analysis for cable 3 stations or cable networks? 4 A. I don't recall doing a 5 SSNIP, but I would have to go back and 6 refer to my -- from that perspective, but 7 I would have to go back and refer to my 8 initial report. 9 Q. Okay. And do you -- are you 10 able to say today whether cable stations 11 or cable networks are customers in the 12 relevant output market that you defined? 13 A. I think that with the caveat 14 that we are studying the non-pay-per-view 15 events, which, of course, are not the 16 important or salient or marketable or 17 valuable component of the content that's 18 being created, I think that you could say 19 that the cable networks can serve as a 20 proxy for the preferences of the ultimate 21 consumers, but I think that I conducted 22 my relevant output market analysis from 23 the perspective of the ultimate consumers 24 or customers, namely, the viewers.</p>
<p>Page 552</p> <p>1 BY MR. ISAACSON: 2 Q. So at the -- by the end of 3 your reply report, you have not done a 4 SSNIP analysis for your output market for 5 sponsors; is that correct? 6 MR. CRAMER: Objection to 7 form. 8 THE WITNESS: I would have 9 to go back and look at my initial 10 report, but I -- my -- sitting 11 here, I don't -- I don't recall 12 doing that. 13 BY MR. ISAACSON: 14 Q. Okay. And at the end of 15 your reports, for your -- for the 16 relevant output market you have defined, 17 you haven't done a SSNIP analysis for 18 broadcast networks; is that correct? 19 A. I think the same answer. 20 It's possible I had record evidence that 21 spoke to the views of broadcasters, but 22 I -- sitting here, that's not what I 23 recall. 24 Q. Okay. For your relevant</p>	<p>Page 554</p> <p>1 Q. Are the consumers the only 2 relative -- relevant customers in the 3 output market you have defined? 4 A. Can I have it back? 5 - - - 6 (The reporter read from the 7 record as requested.) 8 - - - 9 BY MR. ISAACSON: 10 Q. And by "consumers," I mean 11 individuals who attend or watch events, 12 such as myself. 13 A. I am going to have it back. 14 I am sorry. 15 Q. Sure. I don't blame you. 16 - - - 17 (The reporter read from the 18 record as requested.) 19 - - - 20 BY MR. ISAACSON: 21 Q. And by "consumers," I mean 22 individuals who attend events or watch 23 them. 24 A. I don't know what it means</p>

1 market, estimates the additional live
 2 events that would have taken place if you
 3 eliminated the challenged conduct?

1 Q. All right. Let me try it
 2 this way: In Figure 4B, using the ranked
 3 definition, you are estimating how many
 4 additional bouts would have taken place
 5 from 2010 to 2016, assuming the same
 6 but-for world that would cause a
 7 foreclosure share of 30 percent or less?

8 A. So are you asking me what
 9 the implied reduction in output was in
 10 the ranked market?

11 Q. I am just trying to
 12 understand your but-for world.

13 A. Oh, the but-for world is --
 14 the but-for world doesn't vary as we move
 15 across my analyses. I am -- I am just
 16 telling you we don't -- this analysis
 17 that we do here, as you may or may not
 18 know, is -- does not depend on my
 19 specifying a but-for foreclosure level.
 20 This is a trend analysis. This is a
 21 before/after analysis.

22 Q. I realize that. But the --
 23 your but-for world in Figure 4B is the
 24 same but-for world that generates a

1 purposes of Figure 4B the same world
 2 where you have a foreclosure percentage
 3 of 30 percent or below?

1 A. I think that's fair.
 2 Q. Okay. And using your trend
 3 analysis, if I am reading this right, in
 4 2016, for Zuffa events, which there were
 5 approximately a little less than 700 in
 6 the actual world, the -- in your
 7 estimation -- no, actually you are not
 8 estimating the Zuffa event.

9 So let me -- the total event
 10 account. The total MMA event account --
 11 actually, that's kind of confusing.
 12 Why is the total MMA account
 13 less than the Zuffa account?

14 A. The Zuffa numbers are on
 15 the -- are on the left-hand side. If you
 16 want to read --
 17 Q. I am looking at the blue
 18 line and the green line.

19 A. Mine don't have
 20 color-coding, but --
 21 MR. CRAMER: Here.
 22 THE WITNESS: Okay. If you

4 A. I think it's the same
 5 but-for world, but I am not -- I am not
 6 using that same regression model as the
 7 tool or the mechanism that allows me to
 8 make this projection. I am simply taking
 9 a trend of output at the industry level
 10 and projecting it forward from 2010.

11 Q. All right. So in Figure 4B,
 12 using the ranked definition, you are
 13 estimating how many additional bouts
 14 would have taken place from 2010 to 2016,
 15 assuming that there was foreclosure of
 16 30 percent or less?

17 A. Well, that last part of the
 18 question doesn't completely make sense to
 19 me. These are -- there is not a specific
 20 but-for foreclosure share that's lurking
 21 in the background. I don't have to
 22 specify but-for foreclosure share to
 23 calculate an output factor to demonstrate
 24 an output effect in this analysis.

1 want to read off the Zuffa event
 2 count, you need to go to the axis
 3 on the left-hand side.

4 BY MR. ISAACSON:

5 Q. Yes, I understand that.

6 But -- oh, but the --

7 A. And if you want to read off
 8 the total or the non-Zuffa, you have to
 9 go get the relevant curve and then go to
 10 the right axis, the second axis.

11 Q. So -- all right. So the
 12 Zuffa count would be 40-some. That's
 13 right, because you are not going to have
 14 hundreds of those. And for the green --
 15 for the total, you are going to have a
 16 little over 600?

17 A. Which part of the -- so I
 18 am -- I am following the green. Which
 19 part of the green line -- oh, by 2016,
 20 you're right --

21 Q. 2016.

22 A. -- that in the actual world,
 23 what this is telling us is that there
 24 were somewhere between 600 and, say, 700

1 definitions.

2 Q. Okay. But am I right that
 3 for the ranked definition which you are
 4 projecting as an increase in bouts from
 5 over 600 to a little over 1,800?

6 A. What this graph shows is
 7 that had the trend from 2001 --

8 Q. I am sorry. That was for
 9 2016.

10 A. What this shows is that had
 11 the trend in total events in this market
 12 definition, the ranked definition,
 13 persisted, the trend that went from 2001
 14 to 2010, had it persisted, then by 2016,
 15 total events would be somewhere on the
 16 order of 1,800.

17 Q. All right. And based on
 18 that, you reached the opinion that there
 19 would be over 1,800 events in the ranked
 20 definition in the year 2016 in the
 21 absence of the challenged conduct?

22 A. I don't think that that's
 23 the opinion that I reached. I think that
 24 I am trying to be complete with respect

1 events that featured someone in the
 2 ranked definition, which is fairly broad.
 3 Remember, this is anybody in the top 650.

4 Q. Right. So -- and in your
 5 estimation, in the same world it gets you
 6 a 30 percent foreclosure share or less,
 7 the amount of total MMA event in 2016
 8 would rise from -- some amount over 600
 9 to a little over 1,800?

10 A. If you have -- if you
 11 defined your market so broadly as to
 12 include anyone in the ranked definition,
 13 you have to recall, these are -- these
 14 are going to be events that feature
 15 fighters who are relatively obscure in
 16 MMA.

17 I think there is a reason
 18 why I didn't use the same kind of A/B
 19 convention in this figure as I did for
 20 4A, in part, because I think the ranked
 21 definition is likely too broad to get a
 22 reliable estimation of the output effect
 23 here. I think -- I think that I would
 24 point you to more realistic market

1 to every plausible market definition to
 2 show that output was restricted here.

3 Q. All right. Now, let me see
 4 if I can understand -- do you have an
 5 opinion as to how many additional bouts
 6 there would be within the ranked
 7 definition in 2016 in the absence of the
 8 challenged conduct?

9 A. I don't think that I have
 10 ever said that I am predicting that
 11 exactly 1,800 events would have occurred.
 12 I think that what I am saying is that had
 13 the trend persisted, the trend from 2001
 14 to 2010, then one would predict that by
 15 2016, this industry would have grown to
 16 something on the order of 1,800 events.

17 Q. All right. But based on
 18 that trend, are you reaching any opinions
 19 about how many events would have taken
 20 place within the ranked definition in
 21 2016 in the absence of the challenged
 22 conduct?

23 A. I think the opinion that I
 24 am willing to make or take based on this

1 chart in conjunction with all the other
 2 charts that I have is that there was an
 3 output effect and that revenue --
 4 industry output fell no matter -- from
 5 2010, no matter how you define the
 6 relative input market.

7 Q. All right. But are you able
 8 to quantify that output effect within the
 9 ranked definition?

10 A. One could quantify it if one
 11 were truly interested in getting a
 12 number, but I don't know -- I don't know
 13 what the precise number gives you above
 14 and beyond that inference that can be
 15 drawn by saying that it fell with respect
 16 to every way you define the market.

17 Q. Have you quantified an
 18 output effect within the ranked
 19 definition of total events from the -- by
 20 eliminating the challenged conduct?

21 MR. CRAMER: Asked and
 22 answered.

23 THE WITNESS: I don't think
 24 that I have -- I have quantified

1 doing is we first plot the non-Zuffa
 2 event account, which is the red line,
 3 right, through 2010, and then we -- and
 4 then we fit a trend line from 2001 to
 5 2010 and we extrapolate forward and we
 6 say of that trend had persisted, then
 7 non-Zuffa events would have continued
 8 increasing and would have -- would have
 9 reached a certain level by 2016.

10 Q. All right. So in Figure 4A,
 11 the red dotted line is your trend line
 12 for non-Zuffa events; is that correct?

13 A. Fit -- yes. But
 14 importantly, fit from 2001 to 2010 only.

15 Q. By "fit," meaning you are
 16 projecting the trend for 2010 through
 17 2016 by the trend prior to 2010?

18 A. That's fairly close. We fit
 19 the trend with data from '01 to 2010, and
 20 then we project forward through 2016.

21 Q. All right. And based on
 22 that trend analysis -- well, first of
 23 all, in 2016, there is -- for non-Zuffa
 24 events, there is -- it looks like there

1 it.

2 BY MR. ISAACSON:

3 Q. All right. Let me go to the
 4 tracked definition.

5 A. Okay.

6 Q. So here, for the number of
 7 bouts, I just look at the left axis; is
 8 that correct?

9 A. Correct.

10 Q. Okay. And help me
 11 understand the brackets that are the
 12 A and B.

13 A. Sure.

14 Q. So there is the dotted line
 15 that goes to the top of the B bracket.

16 Do you see that?

17 A. Yes.

18 Q. Okay. The -- is that a
 19 combination of the Zuffa event and
 20 non-Zuffa events reflected in the blue
 21 line and the red line?

22 A. No. The dotted red is the
 23 legend that tells you it's the but-for
 24 non-Zuffa event count. So all we are

1 is approximately 20 events?

2 A. In the actual world, yes,
 3 2016, it looks like there were about 20
 4 non-Zuffa events that are in the tracked
 5 definition.

6 Q. All right. And in the
 7 but-for world, there is a little over 40
 8 events?

9 A. For non-Zuffa, correct.

10 Q. For non-Zuffa?

11 A. Correct.

12 Q. So is it your opinion, based
 13 on the trend analysis in Figure 4A, that
 14 for the tracked definition, that in the
 15 absence of the challenged conduct, the
 16 number of non-Zuffa events would have at
 17 least doubled in 2016?

18 A. I think my opinion is that
 19 there is evidence here of an output
 20 effect, of output suppression. That --
 21 that's my opinion. Whether I am able to
 22 quantify that to any reasonable degree is
 23 a related question, and, of course, my
 24 best estimate, if you insist, would be

1 red line, which is the ranked foreclosure
 2 share, the foreclosure share goes from
 3 zero percent to over 70 percent, correct?

4 A. Well, you are -- from 2005
 5 until 2010?

6 Q. No. From -- well, I am
 7 sorry. Let's do from 2007 until 2010.
 8 They go from 20 percent to over 70
 9 percent, correct?

10 A. Correct.

11 Q. And then after 2010, the
 12 ranked foreclosure share goes from 70
 13 percent to 90 percent and then declines
 14 back under 80 percent, correct?

15 A. Correct.

16 Q. For the headliner share from
 17 2007 to 2010, the foreclosure share goes
 18 from, say, 35 percent to 90 percent,
 19 correct?

20 A. Are you on -- the headliner,
 21 which --

22 Q. That's purple.

23 A. The purple, the revenue
 24 weighted?

1 percent.

2 Does that sound right?

3 A. For those two measures, I

4 think that's a fair characterization.

5 They are still going up after 2010.

6 Q. All right. So going back to
 7 Figure 4A, am I correct that the
 8 foreclosure shares in the trend for --
 9 for the period before 2010 where you are
 10 using the actual trends, that's the
 11 period where the actual foreclosure rate
 12 was rising the most rapidly, correct?

13 A. It is -- it is a true
 14 statement that foreclosure was rising
 15 more rapidly prior to 2010 than after,
 16 but it continued to rise after 2010.

17 Q. All right. And so if the
 18 foreclosure share was rising most
 19 significantly before 2010 compared to
 20 after 2010, why does it make sense to
 21 construct a trend line for before and
 22 after 2010 to measure the effect of
 23 foreclosure on output?

24 A. Well, I think that, if

1 Q. Yes.

2 A. Okay. I agree, 35 percent
 3 looks pretty close, yes.

4 Q. And for the tracked revenue
 5 weighted from 2007 to 2010, it goes --
 6 the foreclosure share goes from 40
 7 percent to 90 percent, and then after
 8 2010, it stays close to 90 percent,
 9 correct?

10 A. Are we on the purple now?

11 Q. No. That was the blue.

12 A. The blue.

13 Q. Tracked revenue weighted.

14 A. The blue goes up after
 15 2000 -- I mean, both the purple and the
 16 blue go up after 2010.

17 Q. But they go up between 90
 18 and 100 percent, correct?

19 A. Correct, but it's still an
 20 increase.

21 Q. They go from 30 to 40
 22 percent to 90 percent between 2007 and
 23 2010. And after 2010, they go from
 24 someplace, from anywhere from 90 to 95

1 anything, it would -- it would make the
 2 analysis conservative. It's basically
 3 saying that the benchmark that I am
 4 using, which is the pre-2010 period, was
 5 already tainted or contaminated by
 6 Zuffa's monopsony power. So that trend
 7 was already potentially reduced by virtue
 8 of Zuffa's monopsony power. And if we
 9 could -- if we could have removed that
 10 prior to 2010, it would serve as an even
 11 better benchmark.

12 Q. Well, isn't another way of
 13 looking at this that the faster the
 14 foreclosure share rises, the faster
 15 output rises, according to your chart?

16 A. No.

17 Q. No.

18 A. What we don't get to see is
 19 what -- what would have happened to
 20 output in the absence of Zuffa
 21 monopolizing the market, selling up more
 22 and more fighters beginning 2001.

23 Q. Am I mathematically correct
 24 that what I am observing is that the

1 faster the foreclosure share rises, the
 2 faster output rises in your charts 4A --
 3 in your chart 4A?

4 MR. CRAMER: Asked and
 5 answered.

6 THE WITNESS: That's not the
 7 right inference, no.

8 BY MR. ISAACSON:

9 Q. I'm not asking you about the
 10 inference. I'm just -- am I -- am I
 11 seeing the numbers right? Mathematically
 12 am I correct that the faster the
 13 foreclosure share rises, the faster
 14 output rises as reflected in those
 15 charts?

16 A. No, that's not -- you are --
 17 you are stating it as if one is causing
 18 the other or are related in any way, and
 19 they are not.

20 Q. Okay. Without inferring any
 21 causation, I just want to know if I am
 22 looking at the charts correctly.

23 A. I don't think you are
 24 looking at the charts correctly.

1 that's correct, yes.

2 Q. And so -- in the non-Zuffa
 3 events with headliners, according to your
 4 trend analysis, would have risen from an
 5 actual number of a little over 20 to an
 6 amount -- to, it looks like, 60 events;
 7 is that right?

8 A. Just if I could put it in my
 9 own words, had the -- had the trends of
 10 2001 to 2010 persisted, you would have --
 11 you would have declined to only around 60
 12 non-Zuffa events featuring headliners as
 13 opposed to what happened in the actual
 14 world, which was something around 30.

15 Q. Do you conclude from this
 16 trend analysis that output of either --
 17 are you able to quantify from this trend
 18 analysis the extent to which output would
 19 have risen in the absence of the
 20 challenged conduct?

21 A. Well, if you -- if you
 22 wanted to quantify it -- and for an
 23 analysis that I performed in my rebuttal
 24 report, I do -- I do quantify it, but if

1 Q. Okay. The -- are you aware
 2 of any trend analysis which show that the
 3 faster the foreclosure rate rises, output
 4 declines?

5 A. I don't understand. Are
 6 you -- are you asking me about the
 7 analyses that I have performed?

8 Q. Sure.

9 A. I -- I certainly don't -- I
 10 haven't performed any analyses that would
 11 illuminate that point.

12 Q. All right. And so if we
 13 look at Figure 4C.

14 A. Okay.

15 Q. This is your headliner
 16 measure. And here, for total events, the
 17 green line, your trend analysis here
 18 shows that, say, approximately 60 -- we
 19 will call it 66 actual events took place
 20 in 2016, total MMA events.

21 And according to your trend
 22 analysis, you would have expected over
 23 100 in 2016?

24 A. In the headliner submarket,

1 you wanted to quantify it, you could look
 2 at the difference between the dash lines
 3 and the straight lines.

4 Q. Okay. This isn't about what
 5 I want to do. This is about what
 6 opinions you are giving.

7 A. Sure.

8 Q. Are you quantifying the
 9 amount of output? Are you giving the
 10 opinion that the amount of output would
 11 have increased in the absence of the
 12 challenged conduct by the difference
 13 between the actual numbers and the
 14 current -- and the trend number in 2016?

15 A. I think that a fair
 16 characterization of my opinion is that
 17 output was reduced, and if you wanted to
 18 quantify it, the best estimate that I
 19 could give would be the difference
 20 between the dash lines, the projections
 21 and the actual lines.

22 Q. In your rebuttal report, in
 23 paragraph 49.

24 A. Okay. Paragraph 49?

1 Q. All right.

2 MR. ISAACSON: Thank you. I
3 don't have any more questions.

4 MR. CRAMER: Very good.

5 THE VIDEOGRAPHER: Okay.

6 The time is 5:12 p.m. This is the
7 end of Dr. Hal Singer's
8 deposition. We are going off the
9 record.

10 - - -
11 (The deposition concluded at
12 5:12 p.m.)
13 - - -

1 INSTRUCTIONS TO WITNESS

2
3 Please read your deposition over
4 carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it.

10 You are signing same subject to the
11 changes you have noted on the errata
12 sheet, which will be attached to your
13 deposition.

14 It is imperative that you return
15 the original errata sheet to the deposing
16 attorney within thirty (30) days of
17 receipt of the deposition transcript by
18 you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.

21

22

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24

1 CERTIFICATE

2
3
4 I HEREBY CERTIFY that the
5 witness was duly sworn by me and that
6 the deposition is a true record of
7 the testimony given by the witness.

8
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13 Lori A. Zabielski
14 Registered Professional Reporter
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1 ACKNOWLEDGEMENT OF DEPONENT

2 I, _____, do
3 hereby certify that I have read the
4 foregoing pages, 338-652 PGS, and that
5 the same is a correct transcription of
6 the answers given by me to the questions
7 therein propounded, except for the
8 correction or changes in form or
9 substance, if any, noted in the attached
10 Errata Sheet.11 _____
12 HAL J. SINGER, Ph.D. DATE13
14
15
16
17 Subscribed and sworn
18 to before me this19 ____ day of _____, 20_____.
20 My commission expires:21 _____
22
23
24 Notary Public

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1 LAWYER'S NOTES

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